

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

-----X

In Re:

LIMETREE BAY SERVICES, LLC, *et al.*,

Chapter 11
Case No. 21-32351 (DRJ)

Debtors.¹

Jointly Administered

-----X

**OBJECTION OF AXENS NORTH AMERICA INC. TO PROPOSED CURE AMOUNT
AND POSSIBLE ASSUMPTION OF CONTRACT**

Axens North America, Inc. (“Axens”), a creditor of the debtor, Limetree Bay Refining LLC (“Refining Debtor”), hereby submits this objection to the Debtors’ Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts. In support of the Objection, Axens respectfully represents as follows:

OBJECTION

1. Axens is an international technology provider in the field of refining, petrochemicals, gas chemicals, and alternative fuels.
2. On November 21, 2018, Axens and the Refining Debtor entered into a License Agreement (the “License”). Annexed hereto as Exhibit A is a true and accurate copy of the License. The License contemplated that Refining Debtor was constructing Semi-Regenerative Catalytic Reformer and Hydrotreaters (hereinafter “Units”) at its facility. Under the License, Axens granted the Refining Debtor a non-exclusive right to use the know-how and patents related to the process

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Limetree Bay Services, LLC (1866); Limetree Bay Refining Holdings, LLC (1776); Limetree Bay Refining Holdings II, LLC (1815); Limetree Bay Refining, LLC (8671); Limetree Bay Refining Operating, LLC (9067); Limetree Bay Refining Marketing, LLC (9222). The Debtors’ mailing address is Limetree Bay Services, LLC, 11100 Brittmoore Park Drive, Houston, TX 77401.

to engineer, construct, operate, maintain and repair the Units. In exchange for such license, the Refining Debtor agreed to pay Axens a licensing fee of \$2,755,000 due and payable as follows: (i) \$100,000 upon Effective Date (as such term is defined in the License); (ii) \$455,000 upon project approval; (iii) \$550,000 upon units Start-Up; and (iv) \$550,000 to be invoiced yearly in the next three years after the Start-Up. Id. at Article 7.

3. On July 12, 2021 (the “Petition Date”), Refining Debtor and its affiliates (collectively the “Debtors”) filed their petitions for relief under chapter 11 of the United States Bankruptcy Code.

4. On October 28, 2021, Axens timely filed a proof of claim against the Refining Debtor’s estate, Claim No. 99, in the amount of \$2,136,099.22,² which includes the amounts due under the License as well as monies due and owing to Axens from Refining Debtor for goods sold and services performed.

5. On November 10, 2021, the Debtors filed a Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts (the “Notice”). The Notice purports to set forth the cure amount for each contract that the Debtors may assume and or assign to a winning bidder of their assets and that the cure amount includes “all known or estimated liabilities of any nature of the Debtors arising under a Potential Purchased Contract^[3] as of the anticipated Closing of the Sale.”

6. The Debtors identified the License as a Potential Purchased Contract and set forth a cure amount of “\$-”. Notwithstanding that the License unequivocally states that \$550,000 is due yearly for the next three years after the Start-Up or 2021, the Debtors did not identify \$550,000 as

² Axens reserves the right to seek payment of any amounts set forth in its proof of claim as an administrative priority claim.

³ As used herein, the term Potential Purchased Contract shall have the meaning set forth in the Notice.

the applicable cure amount. As of any closing on the sale of the Debtors' assets, the cure amount due under the License is \$550,000.

7. Axens respectfully submits that the cure amount under the License is \$550,000 and not \$0. Axens also reserves the right to seek payment of all post-petition amounts owed from the Debtors to Axens as an administrative priority claim.

8. Accordingly, Axens objects to any assumption of the License unless the Debtors (i) pay the cure amount of \$550,000; and (ii) provide adequate assurance of future performance under the License pursuant to Section 365 of the Bankruptcy Code. As to the later, Axens notes that, among other continued obligations under the License, additional fees of \$550,000 each are due in November of 2022 and November of 2023.

Dated: December 3, 2021

Respectfully submitted by,

/s/ M. Jermaine Watson
M. Jermaine Watson
State Bar No. 24063055
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, Texas 76102
Phone: 817-877-2800
Fax: 817-877-2807
Email: jwatson@canteyhanger.com

AND

Melissa A. Pena
NORRIS, MCLAUGHLIN PA
7 Time Square, 21st Floor
New York, New York, 10036
Phone: 212-808-0700
Fax: 212-808-0844
Email: mapena@norris-law.com
(Pro Hac Vice Pending)

**ATTORNEYS FOR AXENS NORTH
AMERICA, INC.**

CERTIFICATE OF LIMITED CONSENT

The undersigned counsel hereby certify that on December 3, 2021, an agreement was reached between the Debtors and Axens, through their undersigned counsel, allowing Axens to file this Objection four (4) days after the deadline indicated in the Notice. Notwithstanding this agreement, the parties reserve all other rights including, but not limited to, the right to respond and be heard on the merits of the Objection.

AGREED AS TO FORM AND SUBSTANCE BY:

/s/ M. Jermaine Watson

M. Jermaine Watson
State Bar No. 24063055
CANTEY HANGER LLP
600 West 6th Street, Suite 300
Fort Worth, Texas 76102
Phone: 817-877-2800
Fax: 817-877-2807
Email: jwatson@canteyhanger.com

AND

Melissa A. Pena
NORRIS, MCLAUGHLIN PA
7 Time Square, 21st Floor
New York, New York, 10036
Phone: 212-808-0700
Fax: 212-808-0844
Email: mapena@norris-law.com
(Pro Hac Vice Pending)

**ATTORNEYS FOR AXENS NORTH
AMERICA, INC.**

/s/ Elizabeth A. Green

BAKER HOSTETLER LLP
Elizabeth A. Green, Esq
So. Dist. Fed ID 903144
Jimmy D. Parrish, Esq.
So. Dist Fed ID 2687598
200 South Orange Avenue
Suite 2300
Orlando, FL 32801-3432
Phone: 407-649-4000
Fax: 407-841-0168
Email: egreen@bakerlaw.com
Email: jparrish@bakerlaw.com

AND

BAKER HOSTETLER LLP
Jorian L. Rose, Esq
N.Y. Reg. No. 2901783
45 Rockefeller Plaza
New York, NY 10020
Phone: 212-589-4200
Fax: 212-589-4201
Email: jrose@bakerlaw.com

**COUNSEL FOR THE DEBTORS
AND DEBTORS IN POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 3, 2021, a true and correct copy of the foregoing *Objection of Axens North America, Inc. to Proposed Cure Amount and Possible Assumption of Contract* was served electronically by the Court's PACER system on all parties who have entered their appearance in this chapter 11 proceeding including the following parties:

Elizabeth A. Green
Jorian L. Rose
Baker & Hostetler, LLC
Email: egreen@bakerlaw.com
Email: jrose@bakerlaw.com

Jana Smith Whitworth
Hector Duran, Jr.
U.S. Trustee
Email: jana.whitworth@usdoj.gov
Email: hector.duran.jr@usdoj.gov

Michael D. Warner
Jeffrey N. Pomerantz
Robert F. Feinstein
Shirley S. Cho
Pachulski Stang Ziehl & Jones, LLP
Email: mwarner@pszjlaw.com
Email: jpomerantz@pszjlaw.com
Email: rfeinstein@pszjlaw.com
Email: scho@pszjlaw.com

Jason S. Brookner
Lydia R. Webb
Gray Reed
Email: jbrookner@grayreed.com
Email: lwebb@grayreed.com

Sean A. O'Neal
Jane VanLare
Cleary Gottlieb Steen & Hamilton LLP
Email: soneal@cgsh.com
Email: jvanlare@cgsh.com

Scott Alberino
Kevin Eide
Akin Grump Strauss Hauer & Feld LLP
Email: salberino@akingump.com
Email: keide@akingump.com

/s/ M. Jermaine Watson

M. Jermaine Watson